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Comment Info:

General Comment: Jennifer J. Johnson
 Secretary, Board of Governors of the Federal Reserve System
 20th Street and Constitution Avenue, N.W.
 Washington, DC 20551

Dear Secretary Johnson,

One of mine and all online poker players' biggest fears about the proposed regulations under the Unlawful Internet Gambling Enforcement Act (UIGEA) is over blocking of lawful transactions by banks fearful of violating these regulations. Online poker players fear that banks will block transactions involving online poker players even in the majority of states that do not expressly prohibit online poker or that have case law ruling that poker is a game of skill and not unlawful gambling. In *Harris v. Missouri Gaming Commission*, 869 S.W.2d 58 (1994), the Supreme Court of Missouri, where I reside, ruled that poker is a game involving skill and thus not an illegal lottery under the Missouri Constitution. Therefore, in the Missouri, transactions involving online poker are lawful. Under federal case law, In *Re MasterCard International Inc.*, 313 F.3d 257 (5th Cir. 2002) and other cases, the federal courts have ruled that Wire Act only covers sports betting. Therefore, no federal law exists that prohibits transactions involving online poker. In addition, the Department of Justice has never prosecuted an online poker website or other person involved in online poker but not involved in online sports betting. Thus,

transactions involving online poker do not violate federal law.

A few states have expressly outlawed Internet gambling, including online poker. If a bank resides in a state that has expressly prohibited online gambling, online card games or online poker, then such bank should block transactions involving online poker. However, if a bank resides in the majority of states that do not expressly prohibit online poker, then such bank should not block transactions involving online poker. It is true that the law about online gambling or online poker is not clear or settled in some states. However, banks should not have to decide what the law about online poker is in those states where it is not clear. Placing this burden on banks turns them into courts of law and exposes them to unpredictable costs and other burdens.

I recommend that your regulation expressly instruct banks to permit transactions involving online poker unless the state in which the bank resides expressly prohibits all forms of online gambling, online card games or online poker.

Otherwise, poker transactions that should not be blocked will be blocked due to fear of the banks of liability under the UIGEA.

Sincerely,

James P. Yalem